

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.6631 OF 2019

Petitioner : Achyutrao s/o Bhaurao Raut,
Aged about 74 years, Occupation : Retired,
R/o Rautwadi Chikhali, Tah. Chikhali,
Dist. Buldhana

– Versus –

Respondents : 1. The State of Maharashtra,
Finance Department, Mantralaya,
Mumbai -32, through its Secretary.
2. The Zilla Parishad, Buldhana,
through its Chief Executive Officer.
3. The Divisional Commissioner, Amravati
Division Amravati.

Mr. N.B. Kalwaghe, Advocate for the Petitioner.

Mr. A.S. Fulzele, Additional G.P. for Respondent Nos.1 & 3.

None for Respondent No.2.

CORAM: **A.S. CHANDURKAR AND M.W. CHANDWANI, JJ.**

DATE : **9th NOVEMBER, 2022.**

ORAL JUDGMENT : *(Per M.W. Chandwani, J.)*

Rule. Rule made returnable forthwith. As a short question is involved in the writ petition, the matter has been heard finally.

02] Feeling aggrieved by the communication dated 26/09/2018 issued by respondent No.2, whereby the petitioner has been granted benefit of

Assured Progression Scheme (First) from 01/10/2001 instead of 01/10/1994, the present writ petition has been filed.

03] The controversy involved in the writ petition lies in narrow compass as would be clear from the facts stated herein below.

04] On 05/12/1972, the petitioner came to be appointed as Karyalayin Sahayyak (Office Assistant) in the establishment of respondent No.2. Thereafter, the name of post of Karyalayin Sahayyak was renamed as Junior Assistant (Class-III). The petitioner continuously worked on the said post till he retired on superannuation. Vide Government Resolution dated 08/06/1995, respondent No.1 introduced a scheme namely 'Time Bound Promotion' (herein after 'said scheme'). Said scheme was made applicable with effect from 01/10/1994 to the employees of Class-III and Class-IV who have completed 12 years continuous service on the same post. As per said scheme, they will be entitled to get the salary of higher post i.e. immediate promotional post, subject to certain compliance including clearing departmental examinations. Since, the petitioner fulfilled all the criteria except clearing of departmental examination, for which he was exempted, he was eligible for the said scheme. Therefore, as per said scheme he was entitled to pay scale of immediate promotional post. However, the Promotion Selection

Committee did not recommend the name of the petitioner for extending the benefit of said scheme to him. The petitioner retired on 31/10/2002 being superannuated. The petitioner preferred an appeal under Section 14(b) of the Maharashtra Zilla Parishad (Discipline and Appeal) Rules, 1964 before the Additional Commissioner, Amravati. Meanwhile, the petitioner received communication dated 02/10/2010 informing that he has been considered and found not fit to be recommended to the benefits covered under the Government Resolution dated 08/06/1995 for the reason that his confidential reports were unsatisfactory. The petitioner was never intimated/communicated the adverse remarks of the confidential reports. The Commissioner, Amravati remanded the case by its order dated 26/09/2018 and directed respondent No.2 to take decision upon the claim of the petitioner. The Promotion Selection Committee formed by respondent No.2 in its meeting dated 18/09/2018 approved the benefits of time bound promotion to the petitioner with effect from 01/10/2001. Therefore, this petition came to be filed praying -

(a) allow the instant writ petition with costs;

(b) be pleased to quash and set aside the impugned communication/order dated 26/09/2018 (Annexure-K) issued by respondent No.2 i.e. the Zilla Parishad, Buldhana through its Chief Executive Officer;

- (b-i) be pleased to quash and set aside order dated 20/12/2019 (Annexure-R-III) issued by respondent No.2 i.e. Zilla Parishad, Buldhana;
- (c) be further pleased to direct the respondents to grant and provide the entire benefits of “Ashwasit Pragati Yojna” i.e. Assured Progress Scheme/Time Bound Promotion scheme contemplated in Government Resolution dated 08/06/1995 (Annexure-A) to the petitioner w.e.f. 01/10/1994;
- (d) be further pleased to direct the respondents to revise and fix the pay scale of petitioner in accordance with the “Ashwasit Pragati Yojna” i.e. Assured Progress Scheme/Time Bound Promotion scheme stipulated in Government Resolution dated 08/06/1995 and be further pleased to direct them to release the difference in salary and difference in pension on the basis of said pay scale w.e.f. 01/10/1994 forthwith and also direct them to fix and pay monthly pension on the basis of such a revised pay scale in future regularly;
- (e) grant any other relief which this Hon’ble Court deems fit looking into the facts and circumstances of the instant petition and also in the interest of justice.

05] Respondent No.2 filed affidavit-in-reply *inter alia* contending that as per the Government Resolution dated 08/06/1995, the petitioner is not entitled for the benefit on the ground of delay and availability of alternate

remedy of filing an appeal before the Additional Commissioner. It is also contended that the confidential reports of the petitioner from the year 1992 to 1995 are not satisfactory, despite the confidential reports were communicated to the petitioner, he did not improve and, therefore, the petitioner is not entitled for Assured Progression Scheme.

06] Mr. N.B. Kalwaghe, learned Counsel appearing for the petitioner would submit that the petitioner fulfilled all the criteria stipulated in Government Resolution dated 08/06/1995. The petitioner was unaware of the adverse remarks before 02/10/2010 and adverse remarks were never communicated to the petitioner. According to him, unless the adverse remarks are communicated to the petitioner, they cannot be used against the petitioner. To buttress his submission, he seeks to rely on the guidelines issued by the State Government for writing confidential reports. He took us through the guideline nos. 40 and 52. He also seeks to rely on the judgment of this Court in the cases of Dr. Sabita w/o Chayankanti Biswas vs. State of Maharashtra and others in Writ Petition No.5625 of 2005 and Dr. Sukhdeo s/o Krushnaji Chapale vs. State of Maharashtra & others in Writ Petition No.652 of 2010. According to him, unless adverse remarks are communicated to the employee, those cannot be used against him for depriving him from any service benefit.

07] Though the affidavit-in-reply has been filed by respondent No.2, no document showing that communication of the adverse entries in confidential reports to the petitioner before 02/10/2010 has been filed. By order dated 27/09/2022, respondent No.2 was directed to place on record the relevant documents to substantiate the contention that the adverse remarks were communicated to the petitioner. Despite of giving two more opportunities thereafter, no record has been produced, rather, the respondent No.2 chose to remain absent.

08] We have perused the guidelines issued by the Government for writing confidential reports relied by the petitioner. Guideline no.40 stipulates that all adverse remarks in the confidential reports shall be communicated through registered post with acknowledgment and in case of hand delivery, the acknowledgement is to be taken from the concerned employee and those acknowledgments should be preserved. Guideline no.52 contemplates that if adverse remarks are not communicated, same cannot be used against the employee. Despite giving chance to respondent No.2, nothing has been produced on record to show that the adverse remarks mentioned in the confidential reports of the year 1990 to 1995 were communicated to the petitioner. In such circumstances, it has to be presumed

that those adverse remarks were never communicated to the petitioner. On this set of facts, in view of the requirement of the aforesaid Government Resolution dated 08/06/1995, it is clear that those adverse remarks could not have been taken into account to deny to the petitioner the benefit of said scheme with effect from 01/10/1994. Thus, it is apparent that the petitioner is entitled to the benefit of said scheme from 01/10/1994 and not from 01/10/2001.

09] In the case of *Dr. Sukhdeo Chapale (supra)* relied by the petitioner, similarly situated person was granted such benefit from 01/10/1994. Also, in the case of *Dr. Sabita Biswas (supra)*, in paragraph 4 of the judgment, this Court has held that in view of the requirement of Government Resolution dated 01/02/1996, it is clear that those adverse remarks could not have been taken into account to deny benefit of time bound promotion to the petitioner. Thus, we hold that the action of the respondent No.2 not extending the benefit of said scheme to the petitioner from 01/10/1994 is erroneous and arbitrary, therefore, does not stand. As far as aspect of the delay in approaching the court is concerned, the impugned communication is of 26/09/2018 and the petition has been filed on 08/07/2019 i.e. within the reasonable time. In view thereof, the petitioner is entitled to the reliefs as sought for except the cost. Accordingly, the following order is passed:

ORDER

- i. The communication dated 26/09/2018 issued by the Chief Executive Officer, Zilla Parishad, Buldhana as well as the order dated 20/12/2019 issued by the Chief Executive Officer, Zilla Parishad, Buldhana holding the petitioner not entitled to the benefits of time bound promotion from 01/10/1994 are set aside.
- ii. It is declared that in view of the Guideline No.40 and 52 of the Government Resolution dated 01/02/1996, the adverse entries that have not been communicated to the petitioner cannot be taken into consideration for denying such benefits. The petitioner is held to be entitled for the benefits of time bound promotion from 01.10.1994 and the consequential benefits shall be given to the petitioner within a period of three months from the receipt of the copy of this order.
- iii. Rule is made absolute in the above terms with no order as to costs.

(M.W. CHANDWANI, J.)

(A.S. CHANDURKAR, J.)

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